



4910-06-P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

[Docket No. FRA-2012-0033]

#### **Notice of Intent to Grant Buy America Waivers to National Railroad Passenger Corporation and California High-Speed Rail Authority for the Non-Domestic Final Assembly of Four “Prototype” Tier III High-Speed Rail Trainsets**

**AGENCY:** Federal Railroad Administration (FRA), United States Department of Transportation (DOT).

**ACTION:** Notice of intent to grant Buy America waivers.

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**SUMMARY:** FRA is issuing this notice to advise the public that it intends to grant the National Railroad Passenger Corporation (Amtrak) and California High-Speed Rail Authority (Authority) waivers from FRA’s Buy America requirement for the non-domestic final assembly of up to four (two for Amtrak; two for the Authority) “prototype” Tier III high-speed rail (HSR) trainsets in connection with the procurement of HSR trainsets. These waivers apply only to the final assembly of up to two prototype HSR trainsets each for Amtrak and the Authority. Each waiver is subject to the following condition: Before issuing a “Notice To Proceed” to any selected supplier, Amtrak and the Authority each must certify and provide support to FRA that its selected supplier still has not established domestic manufacturing facilities capable of assembling the prototypes and delivering them within a reasonable time. All components used in the prototypes must still be domestically manufactured or separate waivers for components requested and granted before assembly of the prototypes can commence.

**DATES:** Written comments on FRA's determination to grant Amtrak's and the Authority's Buy America waiver requests should be provided to the FRA on or before [INSERT DATE 15 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Please submit your comments by one of the following means, identifying your submissions by docket number FRA-2012-0033. All electronic submissions must be made to the U.S. Government electronic site at <http://www.regulations.gov>. Commenters should follow the instructions below for mailed and hand-delivered comments.

(1) Web Site: <http://www.regulations.gov>. Follow the instructions for submitting comments on the U.S. Government electronic docket site;

(2) Fax: (202) 493-2251;

(3) Mail: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Docket Operations, M-30, Room W12-140, Washington, DC, 20590-0001; or

(4) Hand Delivery: Room W12-140 on the first floor of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the "Federal Railroad Administration" and include docket number FRA-2012-0033. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received,

including any personal information therein, will be posted without change or alteration to <http://www.regulations.gov>. For more information, you may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477), or visit <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Johnson, Attorney-Advisor, FRA Office of Chief Counsel, 1200 New Jersey Avenue, SE., Mail Stop 25, Washington, DC 20590, (202) 493-0078, [John.Johnson@dot.gov](mailto:John.Johnson@dot.gov).

**SUPPLEMENTARY INFORMATION:**

FRA is issuing this notice to advise the public that it intends to grant Amtrak's and the Authority's requests for waivers from FRA's Buy America requirement, 49 U.S.C. 24405(a), for the non-domestic final assembly of up to four (two for Amtrak; two for the Authority) "prototype" Tier III high-speed rail (HSR) trainsets in connection with the procurement of HSR trainsets. These "prototype" Tier III HSR trainsets will be delivered to Amtrak and the Authority for use in passenger (revenue) service. Please note that the Federal Transit Administration (FTA) would use the term "pilot" to describe these vehicles. Because some time may elapse between granting these waivers and construction of prototype HSR trainsets, each waiver has the following condition: Before issuing a "Notice To Proceed" to any selected supplier, Amtrak and the Authority each must certify and provide support to FRA that its selected supplier still has not established domestic manufacturing facilities capable of assembling the prototypes and delivering them within a reasonable time. In addition, all components used in the prototypes must still be domestically manufactured or

separate waivers for components requested and granted before assembly of the prototypes can commence.

The larger projects underlying these waiver requests are Amtrak's and the Authority's plans to advance HSR on the Northeast Corridor and in California, respectively. In near identical waiver requests Amtrak and the Authority asserted that the projects require the purchase and use of high-quality, service-proven FRA Tier III Next Generation Trainsets, including two prototype HSR trainsets for each project.

FRA's Buy America requirement for rolling stock, including HSR trainsets, requires domestic final assembly of the trainsets and that all of the components be manufactured in the United States. More information about FRA's Buy America requirement is available at <http://www.fra.dot.gov/Page/P0185>. Section 24405(a)(2) also permits the Secretary of Transportation (delegated to the FRA Administrator) to waive the Buy America requirements if the Secretary finds that: (A) applying paragraph (1) would be inconsistent with the public interest; (B) the steel, iron, and goods manufactured in the United States are not produced in sufficient and reasonably available amount or are not of a satisfactory quality; (C) rolling stock or power train equipment cannot be bought or delivered to the United States within a reasonable time; or (D) including domestic material will increase the cost of the overall project by more than 25 percent.

FRA believes a waiver is appropriate under 49 U.S.C. §24405(a)(2)(C) because domestically-produced HSR trainsets meeting the specific technical, design, and schedule needs of Amtrak and the Authority are not currently available in the United States. There is no assembly or testing facility for HSR trainsets operating at

speeds greater than 160 mph in the United States. Moreover, FRA estimates that it could take HSR trainset manufacturers a minimum of one-and-a-half to two years to establish the required facilities to support a domestic HSR trainset assembly capability. This includes any HSR trainset manufacturers that currently have passenger railcar manufacturing facilities in the United States. For example, in addition to acquiring specialized machinery and training and hiring the workforce, these manufacturers' plants are currently customized for steel railcars, and HSR trainsets use aluminum, which requires different manufacturing techniques.

In addition, Tier III HSR is a significant new technology for the U.S. market, and safety is a significant factor. Allowing final assembly of the prototype HSR trainsets at the manufacturer's existing non-domestic facilities is necessary to ensure that expected safety benefits of "service-proven" systems are secured, to enable training of domestic workers, and to assure successful technology transfer. For example, rather than attempting to establish new manufacturing and assembly processes at a domestic facility while simultaneously integrating and testing HSR trainset designs, the selected manufacturer(s) can focus on identifying and remedying any defects in the designs specific to Amtrak and the Authority and their operations in the United States. FRA concludes that integrating manufacturing, assembly, and labor resources into the prototype production, among other suggested actions by Amtrak and the Authority, will facilitate the development of domestic HSR production facilities. This same "human technology transfer" has been successful in other global HSR installations in South Korea, China, Taiwan, and Spain.

On March 14, 2014, FRA published on its website public notice of Amtrak's and the Authority's waiver requests. FRA received 13 online comments and one mailed response to this notice. None of the commenters identified a domestic source for HSR trainsets. Of the 14 comments, 10 commenters indicated they were against granting the waiver; four were for granting the waiver. Of the 10 comments "against," four were not responsive to the notice. Of the six remaining dissenters, they mainly disagreed with Amtrak's and the Authority's argument that HSR trainsets cannot be delivered in a reasonable time because Amtrak and the Authority could wait for domestic assembly. While this is theoretically possible, significant capacity and technology transfer problems are probable, and FRA believes that the one-and-a-half to two-year minimum delay could negatively impact the schedules proposed by Amtrak and the Authority. In addition, as noted above, FRA believes that allowing the prototypes to be assembled at the manufacturers' non-domestic factories will facilitate the successful technology transfer and training of U.S. workers. Finally, because FRA is limiting the waivers to final assembly of up to four prototypes with the expectation that the training of domestic resources will occur simultaneously, FRA is not delaying or preventing the establishment of the selected supplier's domestic assembly facilities. FRA finds that this delay to provide "service-proven" systems makes the prototypes not available within a "reasonable time." Therefore, waivers are appropriate.

FRA will publish the letters granting Amtrak's and the Authority's waiver requests on its website at: <http://www.fra.dot.gov/eLib/Details/L16035> and <http://www.fra.dot.gov/eLib/Details/L16036>, respectively.

Issued in Washington, DC on November 26, 2014.

Melissa L. Porter,  
Chief Counsel.

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